IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9278 of 1994

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

K D SHINGADA

Versus

SPECIAL INSPECTOR GENERAL 0FPOLICE

Appearance:

1. Special Civil Application No. 9278 of 1994

MR JV JAPEE for Petitioner No. 1

Mrs. Manisha L. Shah AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 20/10/2004

ORAL JUDGEMENT

1. The petitioner, in this petition under Article

226 of the Constitution, seeks a direction to quash and set aside the order dated 12th January 1993 passed by the respondent No.1, whereby, the petitioner was dismissed from service on the ground that the conviction was recorded for the offence punishable under Section 5(1)(d) of the Prevention of Corruption Act, and the petitioner was sentenced to undergo one year imprisonment and fine of Rs.2000/-, and also for the offence punishable under Section 161 of the Indian Penal Code and the petitioner was sentenced to undergo one year imprisonment and fine of Rs.1000/-. The said power was exercised by the Authority under Article 311(2) of the Constitution of India and the conviction of the petitioner was confirmed in appeal by the High Court and, in the Special Leave Petition filed in the Supreme Court, the petitioner was released on bail, and no order of stay of conviction or sentence was passed by the Supreme Court.

2. This Court had, initially, issued notice, and, thereafter, issued Rule making it returnable after three months by order dated 2.9.1995.

3. When the matter was called out for final hearing on 19th October 2004, the learned advocate for the petitioner sought time to enquire into the matter. Today, when the matter is called out, no further statement is made and the only ground of challenge, as raised in the petition, is the judgment delivered by this High Court in Letters Patent Appeal No.7 of 1991 where, in paragraph 13 of the judgment, this Court observed that no opportunity was afforded to the delinquent against the proposed punishment and, therefore, the impugned order of dismissal was violative of principles of natural justice.

4. In view of the catena of judgments of the Supreme Court on the issue in hand, the Disciplinary Authority is given liberty to immediately pass an order of punishment on recording of conviction preceded by a trial and to exercise the power accordingly unless conviction is stayed in appeal by the Appellate Court. In the present case, admittedly, the conviction of the petitioner is not stayed. In the order of dismissal dated 12th January 1993 passed by the Disciplinary Authority, i.e. Special Inspector General of Police, Ahmedabad Range, it is clearly stated that, in accordance with the Rules, the appeal is available to the delinquent within 60 days from the receipt of order of dismissal before the Director General of Police, State of Gujarat. It seems that even that remedy of appeal was not availed of by the petitioner. Therefore, in my view, no ground is made out to interfere with the order of dismissal passed by the

Authority on the basis of conviction recorded by the trial court. Rule is discharged with no order as to costs.

(Anant S. Dave, J.)
(swamy)